

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM

THE HONOURABLE Mr. JUSTICE R. MAHADEVAN

Cr1.R.C.No.574 of 2017

1.Basamma

2.Minor Makeshan

rep.by his natural guardian
and mother Basamma, the
first petitioner herein.

.... Petitioners

Vs.

Prabhusamy

.... Respondent

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the order dated 23.12.2016 made in M.C.No.14 of 2009 on the file of the Judicial Magistrate, Sathyamangalam, Erode District.

For Petitioners : Mr.A.Babu for
Mr.S.B.Kumarasamy

For Respondent : Mr.D.R.Arun Kumar

ORDER

Challenging the dismissal of the maintenance case filed by the petitioners before the Judicial Magistrate, Sathyamangalam, the present Criminal Revision Case has been filed.

2.Before the Judicial Magistrate, Sathyamangalam, the petitioners herein have filed a maintenance case in M.C.No.14 of 2009 stating that the respondent herein and the first petitioner are husband and wife; that before three months of their marriage, the respondent enticed the first petitioner and had sexual relationship with her and due to the same, she became pregnant; that on a complaint made by her before the Superintendent of Police, Erode District on 06.06.2007, the marriage between them took place on 07.06.2007 as per the Hindu Rites and Customs and they took photographs. After a period of

one week from the date of marriage, the respondent went to his native place and never returned; that on 01.01.2008, a child was born to the first petitioner; that the respondent did not prefer to see the child, rather he tried to have a second marriage; that the respondent is bound to give money to the petitioners for their maintenance; that the first petitioner is not having means to maintain herself and her child; that a sum of Rs.2,500/- each has to be paid as maintenance by the respondent to the first and second respondents.

3.The respondent, in his reply affidavit before the Court below, denied the contentions put forth on the side of the petitioners herein. He stated in the reply affidavit that he was unmarried; that the first petitioner got separated from her mother and brother and living separately; that the first petitioner wanted to marry the respondent, but since her proposal was refused by the respondent, she made a false complaint against the respondent before the Police. It was also stated that no marriage took place between the first petitioner and the respondent; that she was having illicit intimacy with several persons and only due to the same, she got pregnant and even though the respondent is not the father of the child, she tells everyone that only the respondent is the father of the child. It was also stated that a suit has been filed in O.S.No.67 of 2008 before the Judicial Magistrate Court, Sathyamangalam by the respondent herein praying to declare that the respondent herein is not the father of the second petitioner (child) and in that suit, an order has been passed on 11.04.2008 in favour of the respondent.

4.Considering the materials and evidence available on record, the Trial Court dismissed the maintenance case, observing that the petitioners are not entitled to get maintenance from the respondent, since it is clear from the D.N.A. report that the respondent herein is not the paternal father of the second petitioner. Challenging the same, the present revision has been filed by the petitioners.

5.The main point that has to be decided is as to whether the petitioners are entitled to get maintenance from the respondent or not.

6.The learned counsel for the petitioners has submitted that the Trial Court has failed to consider Ex.P1-Marriage photograph which clearly establishes the solemnization of the marriage between the first petitioner and the respondent. He submitted that the Trial Court has erred in rejecting Exs.P9 and P10-Judgment and decree in O.S.No.67 of 2008 on the file of the District Munsif Court, Sathyamangalam, in which the declaration and permanent injunction sought for by the respondent were

rejected. He further submitted that D.N.A. report is not a conclusive proof in evidence and hence the learned Judicial Magistrate ought to have rejected the report in toto. Finally it is submitted that all the other reasons assigned by the Court below in dismissing the maintenance application are unsustainable and against the well settled principles of this Court as well as the Hon'ble Supreme Court.

7.The learned counsel for the respondent has submitted that the Court below has considered the materials and evidence in a proper perspective and has correctly dismissed the petition seeking maintenance and hence the same does not require any interference in the hands of this Court.

8.Heard the learned counsel on either side and perused the materials and evidence available on record carefully and meticulously.

9.According to the petitioners, the marriage between the first petitioner and the respondent took place on 07.06.2007. In the grounds, it is stated by the petitioners that the suit filed by the respondent in O.S.No.67 of 2008 before the Judicial Magistrate, Sathyamangalam, praying for declaration and permanent injunction, has been negatived by the Court. But according to the respondent, no marriage took place between the respondent and the first petitioner and that the said suit ended in favour of the respondent. In this connection, the Court below has analysed the judgment of the suit in O.S.No.67 of 2008, wherein, in paragraph-10, it is stated that marriage between the first petitioner and the respondent had taken place. Further, the fact remained that the same has not been nullified in the manner known to law and no Court of law has passed any judgment nullifying the marriage by granting the relief of declaration or permanent injunction, to the respondent. In the circumstances, the Court below has rightly held that the first petitioner is the wife of the respondent. This Court is not inclined to interfere with the same, as the Court below has analysed the materials and evidence in a proper perspective and came to the conclusion that the first petitioner herein is the wife of the respondent herein.

10.In respect of the important issue as to whether the respondent is liable to pay maintenance to the petitioners, it is seen that a DNA test has been conducted on both the first petitioner and the respondent and the same has been concluded as "From the DNA typing results of the above individuals, it is found that the alleged father Mr.Prabhusamy is excluded from the paternity of the male child Magesh". Thus, it is crystal clear that the respondent is not the paternal father of the second

petitioner (child). As per Section 125(4) of the Code of Criminal Procedure, no wife shall be entitled to receive an allowance from her husband under this Section if she is living in adultery, or if, without any sufficient reason, refuses to live with her husband, or if they are living separately by mutual consent. Only under these circumstances, the Court below came to the conclusion that the petitioners are not entitled for any maintenance from the respondent. Since the respondent, on the basis of the DNA Test, has proved that he is not the paternal father of the second petitioner herein, the petitioners are not entitled to get any maintenance from the respondent, and hence the same need not be interfered with by this Court.

11. In view of the foregoing, the impugned judgment passed by the Court below, is confirmed and the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

KM

To

1. The Judicial Magistrate, Sathyamangalam, Erode District.
2. The Public Prosecutor, Madras High Court.

+1cc to Mr.D.R.Arun Kumar, Advocate, SR.No.12353.

सत्यमेव जयते

Cr1.R.C.No.574 of 2017

MP (CO)

CSR: 16.03.2020

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